IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 587 of 2006
Date of decision 6 . 8 .2007

The Commissioner of Income Tax, Jalandhar 1 .. Appellant

Versus

Rajiv Bhatara .. Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

PRESENT: Mr.Sanjiv Bansal, Advocate for the Revenue
Mr. Ravish Sood, Advocate for the assessee

M.M.Kumar, J.

The Revenue has filed the instant appeal under Section 260A of the Income Tax Act,1961 (for brevity 'the Act') challenging order dated 11.7.2006 passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (for brevity 'the Tribunal') in IT(SS) No.22(ASR)/2005 for block period 1.4.1990 to 3.7.2000. It has been claimed that the following substantive question of law would emerge from the order of the Tribunal:

> " Whether, on the facts and in the circumstances of the case, the ITAT was right in law in confirming the CIT(A)'s order directing not to levy surcharge on the tax worked out on the undisclosed income as the case pertains to a search conducted prior to 1.6.2002.?".

It is undisputed that search in this case took place on 6.4.2000 and the provision with regard to surcharge was added by way of amendment in Section 113 of the Act on 1.6.2002. The Assessing Officer, however, in his order dated 22.5.2002 imposed surcharge and an application under Section 154 of the Act filed by the assessee for rectification was dismissed vide order dated 17.9.2003 (Annexure A.2) with the observation that the

surcharge was levied as per the provisions of Part I of the Ist Schedule appended to Finance Act 2000. On the ground that there was no mistake apparent on the record, the application under Section 154 of the Act was rejected. However, the Commissioner of Income Tax (Appeals), Ludhiana (for brevity 'the CIT(A)') reversed the order passed by the Assessing Officer and took the view that surcharge was not leviable in cases where the search has taken place prior to 1.6.2002. In that regard, reliance was placed on a Division Bench judgement of this Court in the case of CIT v. Ram Lal Bahu Lal 148 CTR 643.

On further appeal by the Revenue, the Tribunal upheld the order dated 12.9.2005 passed by the CIT(A) holding that the search in the present case took place on 6.4.2000 which was much prior to the date of amendment made in Section 113 of the Act. The amendment was incorporated on 1.6.2002 by inserting proviso to Section 113 by Finance Act 2002. It was by the amendment that levy of surcharge on the disclosed income was specifically provided w.e.f. 1.6.2002. The provision has not been given retrospective effect and, therefore, the Tribunal held that it applied only to cases where searches were carried out after 1.6.2002.

After hearing learned counsel for the parties, we find that the question is no longer res-integra as a Division Bench of this Court in the case of CIT v. Roshan Singh Makkar (2006) 287 ITR 160 has taken the view that the proviso added to Section 113 by Finance Act 2002 cannot be considered as retrospective in its effect and therefore would not be applicable to the search conducted on 6.4.2000. Learned counsel for the Revenue could not successfully dispute that the instant appeal is covered by the Division Bench judgement of this Court in the case of Roshan Singh

Makkar (supra). It is also appropriate to mention that the Division Bench of this Court has been followed by the Madras High Court in the cases of CIT v. Neotech Company (2007) 291 ITR 27 and CIT v. S. Palanivel (2007) 291 ITR 33.

In view of the above, the instant appeal fails and the same is dismissed.

(M.M.Kumar)
Judge

(Ajay Kumar Mittal)
Judge

6.8.2007
okg